

APPEAL NO. 023196  
FILED FEBRUARY 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 8, 2002. The sole issue at the CCH was "Does the compensable injury of \_\_\_\_\_, include the L5/S1 central disc protrusion?" The hearing officer resolved the disputed issue by deciding that "the [Texas Worker's Compensation Commission] Commission does not have jurisdiction to determine the issue because it was litigated on March 7, 2001, and the issue was determined by the decision and order dated March 11, 2001." The appellant (self-insured) appealed, arguing that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly unjust and that the hearing officer erred in deciding that the Commission was without jurisdiction to determine the extent-of-injury dispute. The respondent (claimant) responded, urging affirmance.

DECISION

We reverse and render in part and affirm in part.

We note at the outset that the hearing officer's references to a March 7, 2001, CCH are wrong; that CCH was held on March 7, 2002. The self-insured contends on appeal, as it did at the CCH, that *res judicata* does not prevent litigation of whether the compensable injury extends to and includes the L5/S1 disc protrusion. The self-insured argues that the hearing officer erred in determining that the Commission does not have jurisdiction to determine the extent-of-injury issue because it was litigated at a prior CCH. Barr v. Resolution Trust Corp., 837 S.W.2d 627 (Tex. 1992), addresses the doctrine of *res judicata*. The doctrine of *res judicata* has been applied to administrative action that has been characterized by the courts as "adjudicatory," "judicial," or "quasi-judicial." Bryant v. L.H. Moore Canning Co., 509 S.W.2d 432 (Tex. Civ. App.-Corpus Christi 1974), cert. denied 419 U.S. 845. At the first CCH, the following issues were heard:

1. Did the claimant sustain a compensable injury on (alleged injury)?
2. Did the claimant report an injury to the employer by the 30th day after the injury occurred; and if not, did good cause exist for the claimant's failure to timely report her injury?
3. Did the claimant have disability; and if so, for what period of time?

The hearing officer at the first CCH found that the claimant sustained a "low back" injury that arose out of and was in the course and scope of her employment. However, although this observation was made in the prior decision, we cannot agree that it operates to limit or ultimately adjudicate the extent or scope of the compensable

injury in the absence of an express extent issue nor do we agree that it was actually litigated at that CCH. Therefore, we are not persuaded that the doctrine of *res judicata*, in the nature of issue preclusion<sup>1</sup> applies. We reverse Finding of Fact No. 2 that the hearing officer at the previous CCH necessarily “found” that a low back injury consisted of the L5/S1 central disc bulge as well as Conclusion Of Law No. 3 that the Commission did not have jurisdiction to consider the extent-of-injury issue at this CCH. We render a decision striking that finding and conclusion.

There is sufficient evidence to support the hearing officer's determination that the claimant's compensable injury includes her lumbar spine. It was stipulated that the claimant sustained a compensable injury in the form of a low back injury on \_\_\_\_\_. Conflicting evidence was presented at the CCH on the disputed issue of whether the compensable injury included the L5/S1 central disc protrusion. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. As a general rule, in workers' compensation cases, the issue of injury may be established by the testimony of the claimant alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). In this case, we note that the hearing officer stated that the medical evidence supports the finding that the compensable injury extends to and includes the L5/S1 central disc bulge in concluding that the claimant met her burden of proof. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

We reverse the hearing officer's determination that the Commission does not have jurisdiction to determine the issue. We affirm the hearing officer's determination that the compensable injury of \_\_\_\_\_, extends to and includes the L5/S1 central disc bulge.

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<sup>1</sup> According to Barr, *supra*, issue preclusion, or collateral estoppel, prevents relitigation of particular issues already resolved in a prior suit.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RM  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Edward Vilano  
Appeals Judge